

**CROSNER LEGAL, P.C.**

Lilach H. Klein (SBN 323202)

*lilach@crosnerlegal.com*

Michael T. Houchin (SBN 305541)

*mhouchin@crosnerlegal.com*

Zachary M. Crosner (SBN 272295)

*zach@crosnerlegal.com*

9440 Santa Monica Blvd. Suite 301

Beverly Hills, CA 90210

Tel: (866) 276-7637

Fax: (310) 510-6429

*Attorneys for Plaintiff and the Proposed Class*

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

TINAMARIE BARRALES,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

NEW CHAPTER, INC.,

Defendant.

Case No. 2:25-cv-1171

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Tinamarie Barrales (“Plaintiff”), on behalf of herself, all others  
2 similarly situated, and the general public, by and through her undersigned counsel,  
3 hereby sues Defendant New Chapter, Inc. (“Defendant”) and, upon information and  
4 belief and investigation of counsel, alleges as follows:

5 **I. INTRODUCTION**

6 1. Defendant makes, distributes, sells, and markets a wide variety of  
7 dietary supplements under the brand name New Chapter. The products at issue  
8 include the following, in any size, count, or variation:

- 9
  - New Chapter All-Flora Probiotic + Prebiotic Gummies (2 Billion CFU  
10 of Probiotics);
  - New Chapter Organic Fiber Gummies (4 g Prebiotic Fiber);
  - New Chapter Kids Organic Fiber Gummies (4 g Prebiotic Fiber);
  - New Chapter Cellular Energy Vitamin B12+ Gummies (350 mcg  
14 B12);
  - New Chapter Berberine 1,000 mg Tablets
- 16 (collectively, the “Products”).

17 2. Defendant deceptively labels certain of its New Chapter products by  
18 misrepresenting the dosage amount of each gummy or tablet. Specifically, the front  
19 labels of the New Chapter Products prominently advertise a certain dosage amount,  
20 for example, “4g prebiotic fiber.” Reasonable consumers are led to believe that each  
21 gummy or tablet contains the advertised dosage amount, for example, 4 grams of  
22 prebiotic fiber in each gummy.

23 3. The truth, however, is that each gummy does not contain the advertised  
24 dosage amount. Instead, each gummy or tablet contains only a fraction of the  
25 advertised dosage and consumers must ingest two or more gummies to achieve the  
26 advertised dosage. As a result, consumers grossly overpay for the Products,  
27 receiving only half of the advertised value while paying the full purchase price.

28 4. Additionally, Defendant markets two separate organic fiber gummy

1 products: one advertised for adults and one specifically for “kids.” These  
2 representations lead reasonable consumers to believe that the New Chapter Organic  
3 Fiber Gummies product is more suitable for adults and the New Chapter Kids  
4 Organic Fiber Gummies product is more suitable for kids. Based on this reasonable  
5 belief, consumers are induced to purchase two separate products for each  
6 demographic and are induced to pay an unlawful premium.

7 5. Reasonable consumers purchase the Kids Organic Fiber Gummies  
8 product because they want a product that is specifically formulated for kids and is  
9 guaranteed to be safe for kids to consume. The truth, however, is that the Kids  
10 Organic Fiber Gummies product has the exact same formula and ingredients as the  
11 regular Organic Fiber Gummies product. Defendant puts the same supplement into  
12 two different products with different labels. Consumers are being deceived and  
13 overcharged.

14 6. Plaintiff read and relied upon Defendant’s advertising when purchasing  
15 the New Chapter Organic Fiber Gummies and New Chapter Kids Organic Fiber  
16 Gummies products and was damaged as a result.

17 7. Plaintiff brings this action on behalf of herself and all other similarly  
18 situated consumers in the United States, alleging violations of the California  
19 Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”), Unfair  
20 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* (“UCL”), and False  
21 Advertising Law, §§ 17500 *et seq.* (“FAL”). Plaintiff brings further causes of action  
22 for breach of express and implied warranties, negligent misrepresentation,  
23 intentional misrepresentation/fraud, and quasi-contract/unjust enrichment.

24 8. Plaintiff seeks an order compelling Defendant to (a) cease marketing  
25 the Products using the misleading and unlawful tactics complained of herein, (b)  
26 destroy all misleading deceptive, and unlawful materials, (c) conduct a corrective  
27 advertising campaign, (d) restore the amounts by which it has been unjustly  
28 enriched, and (e) pay restitution damages and punitive damages, as allowed by law.

1                                   **II.    JURISDICTION AND VENUE**

2           9.     This Court has original jurisdiction under 28 U.S.C. § 1332(d)(2) (The  
3 Class Action Fairness Act) because the matter in controversy exceeds the sum or  
4 value of \$5,000,000 exclusive of interest and costs and because more than two-thirds  
5 of the members of the Class reside in states other than the state of which Defendant  
6 is a citizen.

7           10.    The court has personal jurisdiction over Defendant. Defendant  
8 purposely availed itself to California because Defendant does business within this  
9 judicial district, sells the Products in this judicial district, and is committing the acts  
10 complained of below within this judicial district.

11          11.    Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the  
12 injury in this case substantially occurred in this District. Defendant has intentionally  
13 availed itself of the laws and markets of this District through the promotion,  
14 marketing, distribution, and sale of the Products in this District, and is subject to  
15 personal jurisdiction in this District.

16                                   **III.   PARTIES**

17          12.    Defendant New Chapter, Inc. is a Delaware corporation with a principal  
18 place of business located at 90 Technology Drive, Brattleboro, VT 05301. Defendant  
19 is registered to do business in California as entity number 2756801. Defendant  
20 makes, labels, distributes, sells, and markets New Chapter branded supplement  
21 products throughout the United States and in California. Defendant is responsible  
22 for the making, labelling, distribution, selling, and marketing of the Products  
23 throughout the applicable statute of limitations period.

24          13.    Plaintiff Tinamarie Barrales (“Plaintiff”) is a resident of California and  
25 purchased the New Chapter Organic Fiber Gummies and New Chapter Kids Organic  
26 Fiber Gummies products at retail stores in L.A. County in or around 2024. Plaintiff  
27 saw the misrepresentations made on the Product labels prior to and at the time of  
28 purchase and understood them as representations and warranties that each unit of the

1 products contained the advertised dosage amount, and that the Kids Organic Fiber  
2 Gummies product marketed for kids was specially formulated for kids or otherwise  
3 uniquely suitable for kids. Plaintiff relied on the representations made on the Product  
4 labels in deciding to purchase the Products. These representations and warranties  
5 were part of her basis of the bargain, in that she would not have purchased the  
6 Products, or would only have been willing to purchase the Products at a lower price,  
7 had she known the representations were false. Plaintiff would consider purchasing  
8 the Products again if the advertising statements made on the Product labels were, in  
9 fact, truthful and represented in a manner as not to deceive consumers.

#### 10 IV. NATURE OF THE ACTION

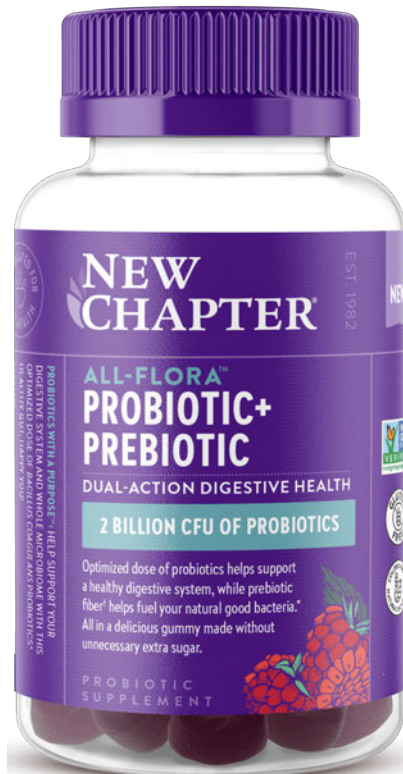
11 14. Defendant sells the following New Chapter branded products (the  
12 “Products”) with misleading dosage representations on the Product packaging and  
13 labels:

- 14 • **New Chapter All-Flora Probiotic + Prebiotic Gummies (2 Billion**  
15 **CFU of Probiotics)** – Two (2) tablets are required to achieve the  
16 advertised dosage of 2 billion CFU of probiotics.
- 17 • **New Chapter Organic Fiber Gummies (4g Prebiotic Fiber)** – Two  
18 (2) tablets are required to achieve the advertised dosage of 4 g prebiotic  
19 fiber.
- 20 • **New Chapter Kids Organic Fiber Gummies (4g Prebiotic Fiber)** –  
21 Two (2) tablets are required to achieve the advertised dosage of 4 g  
22 prebiotic fiber.
- 23 • **New Chapter Cellular Energy Vitamin B12+ Gummies (350 mcg**  
24 **B12)** – Two (2) tablets are required to achieve the advertised dosage of  
25 350 mcg B12.
- 26 • **New Chapter Berberine 1,000 mg Tablets** – Two (2) tablets are  
27 required to achieve the advertised dosage of 1,000 mg berberine.

28 15. True and correct copies of the New Chapter Products and supplement

facts from Defendant's website, www.NewChapter.com, are shown below:

### New Chapter All-Flora Probiotic + Prebiotic Gummies



S U P P L E M E N T F A C T S			
Serving size 2 Gummies Servings per container 30			
Amount per serving			%DV
Calories	15		
Total Carbohydrate	6 g	2%**	
Dietary Fiber	3 g	11%**	
Total Sugars	1 g		*
Includes 1 g of Added Sugars			2%**
Sodium	10 mg	<1%	
<i>Bacillus coagulans</i> MTCC 5856	2 Billion CFU		*
Inulin (from chicory root fiber)	3 g		*
* Daily Value (DV) not established ** Percent Daily Values are based on a 2,000 calorie diet. CFU = Colony Forming Unit			
Other ingredients: Organic cane sugar, pectin, color (organic maqui berry), citric acid, natural flavors, sodium citrate, organic sunflower oil, carnauba wax and corn starch.			
† Not a significant source of dietary fiber ‡ Excludes cap Distributed by NEW CHAPTER, INC., 90 TECHNOLOGY DRIVE, BRATTLEBORO, VT 05301 USA For questions or comments contact 888-874-4461 MADE IN CANADA ©2022 NEW CHAPTER, INC. 6222-A01			

### New Chapter Organic Fiber Gummies



S U P P L E M E N T F A C T S			
Serving size 2 Gummies Servings per container 30			
Amount per serving			%DV
Calories	14		
Total Carbohydrate	6 g	2%**	
Dietary Fiber (from organic blue agave inulin, organic baobab fruit pulp powder [ <i>Adansonia digitata</i> ], and organic acacia seyal [bark])	4 g	14%**	
Total Sugars	<1g		*
Includes 0 g of Added Sugars			0%**
Sodium	19 mg	1%	
* Daily Value (DV) not established ** Percent Daily Values are based on a 2,000 calorie diet.			
Other Ingredients: Water; contains less than 2% of: <i>Bacillus coagulans</i> MTCC 5856, citric acid, organic annatto extract (color), organic carnauba wax, organic natural flavors, organic sunflower oil, pectin, sodium citrate.			
Distributed by NEW CHAPTER, INC., 90 TECHNOLOGY DRIVE, BRATTLEBORO, VT 05301 USA For questions or comments contact 888-874-4461 Certified Organic by Where Food Comes From Organic, Castle Rock, CO, USA Made in Canada from domestic and imported ingredients. † Excludes cap ©2023 NEW CHAPTER, INC. 6222-A01			



## New Chapter Kids Organic Fiber Gummies



SUPPLEMENT FACTS		
Serving size 2 Gummies Servings per container 30		
Amount per serving		%DV
Calories	14	
Total Carbohydrate	6 g	2%**
Dietary Fiber (from organic blue agave inulin, organic baobab fruit pulp powder [ <i>Adansonia digitata</i> ], and organic acacia seyal [bark])	4 g	14%**
Total Sugars	<1 g	*
Includes 0 g of Added Sugars		0%**
Sodium	19 mg	1%
* Daily Value (DV) not established ** Percent Daily Values are based on a 2,000 calorie diet.		
Other Ingredients: Water; contains less than 2% of: <i>Bacillus coagulans</i> MTCC 5856, citric acid, organic annatto extract (color), organic carnauba wax, organic natural flavors, organic sunflower oil, pectin, sodium citrate.		
Distributed by NEW CHAPTER, INC. 90 TECHNOLOGY DRIVE, BRATTLEBORO, VT 05301 USA For questions or comments contact 888-874-4461 Certified Organic by Where Food Comes From Organic, Castle Rock, CO, USA Made in Canada from domestic and imported ingredients. Also sold as Organic Fiber Gummies † Excludes cap ©2023 NEW CHAPTER, INC.		
		6223-A01



## New Chapter Cellular Energy Vitamin B12+ Gummies



SUPPLEMENT FACTS		
Serving size 2 Gummies Servings per container 30		
Amount per serving		%DV
Calories	12	
Total Carbohydrate	4 g	1%**
Dietary Fiber	1 g	4%**
Total Sugars	2 g	*
Includes 2 g of Added Sugars		4%**
Sodium	10 mg	<1%
Vitamin B12 (as cyanocobalamin)	350 mcg	14,583%
Organic Cordyceps ( <i>Cordyceps militaris</i> ) (mycelium, primordia and fruiting bodies)	20 mg	*
** Percent Daily Values are based on a 2,000 calorie diet. * Daily Value (DV) not established		
Other ingredients: Organic tapioca syrup, organic inulin agave, organic cane sugar; Less than 2% of: pectin, organic natural flavors, citric acid, sodium citrate, color (organic black carrot), organic sunflower oil, organic carnauba wax and <i>Bacillus coagulans</i> MTCC 5856.		
† Not a significant source of dietary fiber † Excludes cap † Excellent source is defined as a nutrient delivering > 20% DV per FDA Distributed by NEW CHAPTER, INC., 90 TECHNOLOGY DRIVE, BRATTLEBORO, VT 05301 USA For questions or comments contact 888-874-4461 Certified Organic by Where Food Comes From Organic, Castle Rock, CO, USA Made in Canada ©2022 NEW CHAPTER, INC.		
		6215-B01



**New Chapter Berberine 1,000 mg Tablets**



Supplement Facts	
Serving size 2 Tablets	
Servings per container 30	
Amount per serving	%DV
Berberine HCl from Indian Barberry ( <i>Berberis aristata</i> ) (root) extract	1000 mg •
• Daily Value (DV) not established	
Other ingredients: Microcrystalline cellulose; Less than 2% of: hydroxypropyl methylcellulose, magnesium stearate, stearic acid.	
Distributed by NEW CHAPTER, INC., 90 TECHNOLOGY DRIVE BRATTLEBORO, VT 05301 USA For questions or comments call 888-874-4461 Certified Gluten-Free by NSF; 100% vegan; no artificial flavors or colors.	
<b>Caution:</b> As with any dietary supplement, you should advise your healthcare professional of the use of this product. Do not take this product if you are pregnant, breastfeeding, or attempting to become pregnant. Berberine may cause drug interactions. Consult your healthcare practitioner before taking this product as Berberine may reduce the effectiveness of certain drugs especially those with narrow therapeutic margins. Diabetics or prediabetics taking drugs that lower blood sugar should consult their healthcare practitioner before use because this product may enhance insulin sensitivity and may affect your blood sugar control. Discontinue use and contact your healthcare professional if you experience a side effect or an allergic reaction. Do not exceed suggested use. <b>Keep out of reach of children.</b>	
*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.	

16. Defendant's dosing representations are prominently and conspicuously displayed in large, bolded font to grab the consumer's attention.

17. Contrary to the prominently advertised dosage amount on each of the Products' labels, each gummy or tablet contains only a fraction of the advertised dosage amount. For example, consumers must ingest two (2) gummies of the New Chapter Organic Fiber Gummies Product to achieve the advertised dosage of 4 g. This leads consumers to overpay for the Products by a significant margin.

18. Defendant's advertising misleads reasonable consumers into believing that each gummy or tablet contains the advertised dosage of nutrients or probiotics. However, contrary to the labeling, each unit only contains a fraction of the advertised nutrients or probiotics. Consequently, reasonable consumers believe that they are receiving two times the amount of nutrients or probiotics per Product than what they



1 are actually receiving. As a result, Defendant has charges consumers a premium for  
2 the Products, while cutting costs and reaping the financial benefits of selling dietary  
3 supplements with less than the advertised dosage of nutrients or probiotics in each  
4 Product.

5 19. The label misrepresentations are material to reasonable consumers,  
6 including Plaintiff. The dosage representations (number of milligrams) convey the  
7 type and amount of nutrients or probiotics provided by the Products, and the primary  
8 purpose of the Products is to provide the amount of nutrients or probiotics advertised  
9 by the Product labels. Accordingly, reasonable consumers are likely to be deceived  
10 by the Products' labels.

11 20. Additionally, as shown above, both the Organic Fiber Gummies and  
12 Kids Organic Fiber Gummies products contain the same amount of the same active  
13 and inactive ingredients. In other words, both New Chapter Organic Fiber Gummy  
14 products are identical in form and quantity.

15 21. However, the Kids Organic Fiber Gummy product is advertised as  
16 specially formulated for "kids" or otherwise uniquely suitable for kids. Based on the  
17 different marketing and labeling on the front of the Kids Organic Fiber Gummies  
18 product and the labeling on the front of the regular Organic Fiber Gummies product,  
19 reasonable consumers believe that there is something different about the products  
20 that makes the Kids Organic Fiber Gummies product better suited or more  
21 appropriate for kids.

22 22. However, both products have the same amount of active and inactive  
23 ingredients.

24 23. Defendant's misrepresentations are misleading because the Kids and  
25 regular Organic Fiber Gummies products are identical.

26 24. Defendant advertises identical products to different demographics  
27 under the guise of being uniquely formulated.

28 25. Because the Kids Organic Fiber Gummies product represents that it is

1 uniquely suitable for kids, when in fact the Kids and regular Organic Fiber Gummies  
2 products are formulated identically, consumers are induced to purchase two separate  
3 products for each demographic. Consumers are induced to pay an unlawful  
4 premium.

5 26. The Kids Organic Fiber Gummies product is not uniquely formulated  
6 for kids. The Kids and regular Organic Fiber Gummies products contain the exact  
7 same formulation. Defendant takes the same exact product and puts it in two  
8 different forms of packaging: one labeled for kids and one labeled for adults. In  
9 short, Defendant tricks consumers into thinking they are buying a product uniquely  
10 formulated for kids, when in reality, consumers are just buying Defendant's Organic  
11 Fiber Gummies product for adults in a different packaging marketed for kids.

12 **DEMAND FOR DIETARY SUPPLEMENTS AND THE COMPETITIVE**  
13 **MARKET**

14 27. Over the past 20 years, there has been a significant increase in the  
15 prevalence of supplement use. The dietary supplement market has been growing in  
16 terms of sales and products available on the market. Consumers are being presented  
17 a large number of products, brands, and formulations, distributed through a wide  
18 variety of marketing channels. The value of the global dietary supplements market  
19 was estimated to be worth nearly USD 152 billion in 2021, and is expected to be  
20 worth USD 300 billion by 2028.<sup>1</sup>

21 28. In response to consumers' desire for dietary supplements, many  
22 companies, like Defendant, have scrambled to manufacture, market, and sell  
23 purportedly high dosages or more nutrients, at the same or lower costs, in an effort  
24 to gain market share and outsell competitors. Unfortunately, rather than creating the  
25 actual high dosage dietary supplements with more nutrients or probiotics that  
26 consumers desire, Defendant makes products with lower dosages and less nutrients

27  
28 <sup>1</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10421343/>

or probiotics than is advertised on the Products' packaging and front labels, and then markets them to consumers through deceptive labeling and packaging claims. In doing so, Defendant misleads consumers into believing that the Products contain higher dosages or more nutrients or probiotics in each gummy or tablet than what is actually contained therein.

29. Defendant's competitors correctly label and sell their products to accurately reflect the correct amount of nutrients or probiotics contained in each gummy or tablet unit. They do so by specifying on the front label the amount of nutrients or probiotics per gummy or tablet unit. For example, The Vitamin Shoppe's Chewable Probiotic product contains exactly what it says: chewable tablets each containing 2 billion CFUs of probiotics.

### **The Vitamin Shoppe Chewable Probiotic<sup>2</sup>**



<sup>2</sup> [https://www.vitaminshoppe.com/p/probiotic-chewable-100-chewable-tablets/vs-2600?utm\\_source=google&utm\\_medium=organic&utm\\_campaign=free\\_shopping](https://www.vitaminshoppe.com/p/probiotic-chewable-100-chewable-tablets/vs-2600?utm_source=google&utm_medium=organic&utm_campaign=free_shopping)

30. Alternatively, Defendant’s competitors disclose on their products’ front labels that the advertised dosage amount does not apply per gummy, and instead applies “per serving.” For example, Amazon’s 4 g Fiber Gummies product specifies that the product contains 4 g of fiber “per serving” and not per gummy.

**Amazon 4 g Fiber Gummies<sup>3</sup>**



31. By falsely, misleadingly, and deceptively labeling and advertising the Products, Defendant sought an unfair advantage over its lawfully acting competitors.

**PLAINTIFF’S PURCHASES, RELIANCE, AND INJURY**

32. Plaintiff Tinamarie Barrales purchased the New Chapter Organic Fiber

<sup>3</sup> [https://www.amazon.com/Amazon-Basics-previously-Regularity-Strawberry/dp/B07GPGQJR4?source=ps-sl-shoppingads-lpcontext&ref\\_=fplfs&psc=1&smid=ATVPDKIKX0DER](https://www.amazon.com/Amazon-Basics-previously-Regularity-Strawberry/dp/B07GPGQJR4?source=ps-sl-shoppingads-lpcontext&ref_=fplfs&psc=1&smid=ATVPDKIKX0DER)

1 Gummies and New Chapter Kids Organic Fiber Gummies products at retail stores  
2 in L.A. County in or around 2024 in reliance on the Products' front label advertising.

3 33. In deciding to purchase the Products, Plaintiff read and relied on the  
4 dosage information displayed on the front labels, which led Plaintiff to believe that  
5 each gummy unit in the products contained the advertised dosage – 4 g of prebiotic  
6 fiber per gummy. At the time of purchase, Plaintiff did not know that the advertised  
7 dosage was false and misleading, and that more than one gummy would need to be  
8 consumed to receive the advertised dosage of 4 g.

9 34. Plaintiff would not have purchased the Products, or would not have paid  
10 as much as she did, had she known that each gummy contained only a fraction of the  
11 advertised dosage. Plaintiff paid a premium for the Products due to the misleading  
12 labelling on the Products' packaging.

13 35. In deciding to purchase the New Chapter Kids Organic Fiber Gummies  
14 product, Plaintiff relied on the Product's claims that the Product was uniquely for  
15 "kids." Based on this representation, Plaintiff believed the Kids Organic Fiber  
16 Gummies product was uniquely for kids and bought it specifically for this reason.  
17 Plaintiff would not have purchased the Product or would not have paid as much as  
18 she had if she knew that the Kids product was identical to the regular Organic Fiber  
19 Gummies product marketed for adults. Plaintiff paid a premium for the Product due  
20 to the misleading labeling on the Product's packaging.

21 36. The representations on the Products' label were and are false and  
22 misleading, and had the capacity, tendency, and likelihood to confuse or confound  
23 Plaintiff and other consumers acting reasonably (including the putative Class)  
24 because, as described in detail herein, the Product labels misrepresent the dosage of  
25 each gummy or tablet.

26 37. Plaintiff acted reasonably in relying on the challenged claims that  
27 Defendant intentionally, prominently, and uniformly placed on the Products' label  
28 and packaging with the intent to induce average consumers into purchasing them.



1 38. Plaintiff, in the exercise of reasonable diligence, could not have  
2 discovered earlier Defendant's unlawful acts described herein because the violations  
3 were known to Defendant, and not to her throughout the Class Period herein.

4 39. Plaintiff paid more for the Products, and would only have been willing  
5 to pay less or unwilling to purchase them at all, absent the false and misleading  
6 labeling statements complained of herein.

7 40. For these reasons, the Products were worth less than what Plaintiff paid  
8 for them.

9 41. Plaintiff would like to, and would consider, purchasing the Products  
10 again when she can do so with the assurance that the Products' labels are truthful  
11 and consistent with the Products' ingredients.

12 42. Plaintiff will be unable to rely on the Products' advertising or labeling  
13 in the future, and so will not purchase the Products again although she would like to.

14 43. Plaintiff lost money as a result of Defendant's deceptive claims and  
15 practices in that she did not receive what she paid for when purchasing the Products.

16 44. Plaintiff detrimentally altered her position and suffered damages in an  
17 amount equal to the premium she paid for the Products.

18 45. The senior officers and directors of Defendant allowed the Products to  
19 be sold with full knowledge or reckless disregard that the challenged claims are  
20 fraudulent, unlawful, and misleading.

21 **SUBSTANTIAL SIMILARITY**

22 46. Defendant's New Chapter Products described herein are substantially  
23 similar, as they each contain (1) a dosage representation conspicuously and  
24 prominently placed on the primary display panel of the Products' front labels, and  
25 (2) require consumption of two or more units to obtain the advertised dosage of  
26 nutrients or probiotics.

27 47. The misleading advertising on the Products' front labels are all the  
28 same: consumers are led to believe that each gummy or tablet contains the advertised

1 dosage amount; however, the Products only contain half of the amount of nutrients  
2 or probiotics advertised. Consumers therefore only receive half of the amount of  
3 nutrients or probiotics promised and pay more than what the Products would be  
4 worth had Defendant's advertising been true.

5 **NO ADEQUATE REMEDY AT LAW**

6 48. Plaintiff seeks damages and, in the alternative, equitable restitution.  
7 Plaintiff and members of the class are entitled to equitable relief as no adequate  
8 remedy at law exists.

9 49. The statutes of limitations for the causes of action pled herein vary.  
10 Class members who purchased the Products more than three years prior to the filing  
11 of the complaint will be barred from recovery if equitable relief were not permitted  
12 under the UCL.

13 50. The scope of actionable misconduct under the unfair prong of the UCL  
14 is also broader than the other causes of action asserted herein. It includes  
15 Defendant's overall unfair marketing scheme to promote and brand the Products  
16 over a long period of time in order to gain an unfair advantage over competitor  
17 products. The UCL also creates a cause of action for violations of law (such as  
18 statutory or regulatory requirements and court orders related to similar  
19 representations and omissions made on the type of products at issue). This is  
20 especially important here because Plaintiff alleges Defendant has committed  
21 "unlawful" acts and brings a claim for violation of the UCL's "unlawful prong."  
22 Plaintiff's UCL unlawful prong claim does not rest on the same conduct as her other  
23 causes of action, and there is no adequate remedy at law for this specific unlawful  
24 claim. Plaintiff and class members may also be entitled to restitution under the UCL,  
25 while not entitled to damages under other causes of action asserted herein (e.g., the  
26 FAL requires actual or constructive knowledge of the falsity; the CLRA is limited  
27 to certain types of plaintiffs (an individual who seeks or acquires, by purchase or  
28 lease, any goods or services for personal, family, or household purposes) and other

1 statutorily enumerated conduct).

2 51. Injunctive relief is appropriate on behalf of Plaintiff and members of  
3 the class because Defendant continues to omit material facts about the Products.  
4 Injunctive relief is necessary to prevent Defendant from continuing to engage in the  
5 unfair, fraudulent, and/or unlawful conduct described herein and to prevent future  
6 harm—none of which can be achieved through available legal remedies (such as  
7 monetary damages to compensate past harm). Injunctive relief, in the form of  
8 affirmative disclosures is necessary to dispel the public misperception about the  
9 Products that has resulted from years of Defendant’s unfair, fraudulent, and unlawful  
10 marketing efforts. Such disclosures would include, but are not limited to, publicly  
11 disseminated statements that the Products’ labeling misrepresentations are untrue  
12 and providing accurate information about the Products’ true nature; and/or requiring  
13 prominent disclaimers on the Products’ front labels concerning the Products’ true  
14 nature. An injunction requiring affirmative disclosures to dispel the public’s  
15 misperception, and prevent the ongoing deception, is also not available through a  
16 legal remedy (such as monetary damages). In addition, Plaintiff is currently unable  
17 to accurately quantify the damages caused by Defendant’s future harm, because  
18 discovery and Plaintiff’s investigation have not yet completed, rendering injunctive  
19 relief necessary. Further, because a public injunction is available under the UCL,  
20 damages will not adequately benefit the general public in a manner equivalent to an  
21 injunction.

22 52. Moreover, a legal remedy is not adequate if it is not as certain as an  
23 equitable remedy. Here, Plaintiff may lack an adequate remedy at law if, for instance,  
24 damages resulting from her purchases of the Products are determined to be an  
25 amount less than the premium price of the Products. Without compensation for the  
26 full premium price of the Products, Plaintiff and class members would be left without  
27 the parity in purchasing power to which they are entitled.

28 53. By the same token, Plaintiff’s common law claims require additional

1 showings, compared to the UCL, FAL, or unjust enrichment claims. For example,  
2 to prevail on a breach of warranty claim, Plaintiff must show that the challenged  
3 statements constitute a warranty and that the warranty was part of the basis of the  
4 bargain. No such showings are required by the UCL or FAL, or for an unjust  
5 enrichment theory. In fact, the UCL and the FAL were enacted specifically to create  
6 new claims and remedies not available at common law. And unjust enrichment exists  
7 in part because contractual claims are often more difficult to establish. In this way,  
8 Plaintiff's UCL and FAL claims, and Plaintiff's unjust enrichment claims, are more  
9 certain than their legal claims.

10 54. It is premature to determine whether an adequate remedy at law exists.  
11 This is an initial pleading and discovery has not yet commenced and/or is at its initial  
12 stages. No class has been certified yet. No expert discovery has commenced and/or  
13 completed. The completion of fact/non-expert and expert discovery, as well as the  
14 certification of this case as a class action, are necessary to finalize and determine the  
15 adequacy and availability of all remedies, including legal and equitable, for  
16 Plaintiff's individual claims and any certified class or subclass. Plaintiff therefore  
17 reserves her right to amend this complaint and/or assert additional facts that  
18 demonstrate this Court's jurisdiction to order equitable remedies where no adequate  
19 legal remedies are available for either Plaintiff and/or any certified class or subclass.  
20 Such proof, to the extent necessary, will be presented prior to the trial of any  
21 equitable claims for relief and/or the entry of an order granting equitable relief.

## 22 V. CLASS ACTION ALLEGATIONS

23 55. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff seeks  
24 certification of the following Classes (or alternative Classes or Subclasses):

### 25 The Nationwide Class

26 All U.S. citizens who purchased the Products in their respective state of  
27 citizenship for personal and household use and not for resale within the  
28 applicable statute of limitations and until the date class notice is disseminated.

1       **The California Subclass**

2       All California citizens who purchased the Products in California for personal  
3       and household use and not for resale within the applicable statute of  
4       limitations and until the date class notice is disseminated.

5       56.    The Classes and Subclasses described in this complaint will jointly be  
6       referred to the “Class” or the “Classes” unless otherwise stated, and the proposed  
7       members of the Classes and Subclasses will jointly be referred to as “Class  
8       Members.”

9       57.    Plaintiff and the Class reserve their right to amend or modify the Class  
10       definitions with greater specificity or further division into subclasses or limitation to  
11       particular issues as discovery and the orders of this Court warrant.

12       58.    Excluded from the Class are governmental entities, Defendant, any  
13       entity in which Defendant has a controlling interest, Defendant’s employees,  
14       officers, directors, legal representatives, heirs, successors and wholly or partly  
15       owned subsidiaries or affiliated companies, including all parent companies, and their  
16       employees; and the judicial officers, their immediate family members and court staff  
17       assigned to this case.

18       59.    The members in the proposed Class are so numerous that individual  
19       joinder of all members is impracticable. Due to the nature of the trade and commerce  
20       involved, however, Plaintiff believes the total number of Class members is at least  
21       in the hundreds and members of the Classes are numerous. While the exact number  
22       and identities of the Class members are unknown at this time, such information can  
23       be ascertained through appropriate investigation and discovery. The disposition of  
24       the claims of the Class members in a single class action will provide substantial  
25       benefits to all parties and to the Court.

26       60.    Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on  
27       grounds generally applicable to the Classes, thereby making final injunctive relief  
28       or corresponding declaratory relief and damages as to the Products appropriate with



1 respect to the Classes as a whole. In particular, Defendant has failed to disclose the  
2 true nature of the Products being marketed as described herein.

3 61. There is a well-defined community of interest in the questions of law  
4 and fact involved, affecting the Plaintiff and the Classes and these common  
5 questions of fact and law include, but are not limited to, the following:

- 6 • Whether Defendant breached any express warranties made to Plaintiff  
7 and the Class;
- 8 • Whether Defendant breached any implied warranties made to Plaintiff  
9 and the Class;
- 10 • Whether Defendant violated consumer protection statutes, false  
11 advertising statutes, or state deceptive business practices statutes;
- 12 • Whether Defendant engaged, and continues to engage, in unfair or  
13 deceptive acts and practices in connection with the marketing,  
14 advertising, and sales of the Products;
- 15 • Whether reasonable consumers are likely to be misled by Defendant's  
16 advertising and labeling of the Products;
- 17 • Whether the Products' challenged representations are material  
18 representations made to reasonable consumers;
- 19 • Whether the proposed class is suitable for class certification;
- 20 • The proper amount of restitution, damages, and punitive damages;
- 21 • The proper injunctive relief, including a corrective advertising  
22 campaign;
- 23 • The proper amount of attorneys' fees.

24 62. These common questions of law and fact predominate over questions  
25 that affect only individual Class Members.

26 63. Plaintiff's claims are typical of Class Members' claims because they  
27 are based on the same underlying facts, events, and circumstances relating to  
28 Defendant's conduct. Specifically, all Class Members, including Plaintiff, were

1 subjected to the same misleading and deceptive conduct when they purchased the  
2 Products, and suffered economic injury because the Products were and still are  
3 misrepresented. Absent Defendant's business practice of deceptively and unlawfully  
4 labeling the Products, Plaintiff and Class Members would not have purchased the  
5 Products, or would have paid less for them.

6 64. Plaintiff will fairly and adequately represent and protect the interests of  
7 the Classes, has no interests incompatible with the interests of the Classes, and has  
8 retained counsel with substantial experience in handling complex consumer class  
9 action litigation. Plaintiff and her counsel are committed to vigorously prosecuting  
10 this action on behalf of the Classes and have the financial resources to do so.

11 65. Plaintiff and the members of the Classes suffered, and will continue to  
12 suffer harm as a result of Defendant's unlawful and wrongful conduct. A class action  
13 is superior to other available methods for the fair and efficient adjudication of the  
14 present controversy. Individual joinder of all members of the Classes is  
15 impracticable. Even if individual Class members had the resources to pursue  
16 individual litigation, it would be unduly burdensome to the courts in which the  
17 individual litigation would proceed. Individual litigation magnifies the delay and  
18 expense to all parties in the court system of resolving the controversies engendered  
19 by Defendant's common course of conduct. The class action device allows a single  
20 court to provide the benefits of unitary adjudication, judicial economy, and the fair  
21 and efficient handling of all Class members' claims in a single forum. The conduct  
22 of this action as a class action conserves the resources of the parties and of the  
23 judicial system and protects the rights of the class members. Furthermore, for many,  
24 if not most, a class action is the only feasible mechanism that allows an opportunity  
25 for legal redress and justice.

26 66. Adjudication of individual Class members' claims with respect to  
27 Defendant would, as a practical matter, be dispositive of the interests of other  
28 members not parties to the adjudication, and could substantially impair or impede

1 the ability of other class members to protect their interests.

2 67. Defendant has acted on grounds applicable to the Class, thereby making  
3 appropriate final public injunctive and declaratory relief concerning the Class as a  
4 whole.

5 68. As a result of the foregoing, class treatment is appropriate.

6 **VI. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Violations of the Unfair Competition Law,**

9 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

10 ***(on behalf of the California Class)***

11 69. Plaintiff realleges and incorporates the allegations elsewhere in the  
12 Complaint as if set forth in full herein.

13 70. California's Unfair Competition Law, Business and Professions Code  
14 §17200 (the UCL") prohibits any "unfair, deceptive, untrue or misleading  
15 advertising." For the reasons discussed above, Defendant has engaged in unfair,  
16 deceptive, untrue and misleading advertising, and continues to engage in such  
17 business conduct, in violation of the UCL.

18 71. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code  
19 §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful,  
20 unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
21 misleading advertising."

22 **Fraudulent**

23 72. A statement or practice is "fraudulent" under the UCL if it is likely to  
24 mislead or deceive the public, applying an objective reasonable consumer test.

25 73. As set forth herein, Defendant's claims relating to the Products are  
26 likely to mislead reasonable consumers to believe that each gummy or tablet unit in  
27 the Products contained the dosage amount advertised on the Products' front labels.  
28 Defendant's claims relating to the Kids Organic Fiber Gummies product are likely

1 to mislead reasonable consumers to believe that the Kids product is specially  
2 formulated for kids or otherwise uniquely suitable for kids.

3 74. Defendant's conduct caused and continues to cause substantial injury  
4 to Plaintiff and the other Class members. Plaintiff has suffered injury in fact as a  
5 result of Defendant's unfair conduct. Defendant has thus engaged in unlawful, unfair  
6 and fraudulent business acts and practices and false advertising, entitling Plaintiff  
7 and the Class to public injunctive relief against Defendant, as set forth in the Prayer  
8 for Relief.

9 75. Pursuant to Business and Professions Code § 17203, Plaintiff and the  
10 Class seek an order requiring Defendant to immediately cease such acts of unlawful,  
11 unfair and fraudulent business practices and requiring Defendant to engage in a  
12 corrective advertising campaign.

13 76. Plaintiff also seeks an order for the disgorgement and restitution of the  
14 premium received from the sale of the Products the Class Members purchased,  
15 which was unjustly acquired through acts of unlawful, unfair, and/or fraudulent  
16 competition, and attorneys' fees and costs.

17 **Unlawful**

18 77. The acts alleged herein are "unlawful" under the UCL in that they  
19 violate at least the following laws:

- 20
- 21 • By knowingly and intentionally concealing from Plaintiff and the other  
22 Class members that each unit of the Products did not contain the  
23 advertised dosage, and that the Kids product was not specially  
24 formulated for kids;
  - 25 • By misrepresenting the dosage of the Products on the front label, and  
26 misrepresenting the nature of the Kids product as being specially  
27 formulated for kids or otherwise uniquely suitable for kids;
  - 28 • By engaging in the conduct giving rise to the claims asserted in this  
complaint;

- By violating California Civil Code §§ 1709-1711 by making affirmative misrepresentations about the Products;
- By violating California Civil Code §§ 1709-1711 by suppressing material information about the Products;
- By violating the California Commercial Code for breaches of express and implied warranties;
- By violating California's Sherman Act, Cal. Health & Safety Code § 110390, which prohibits drug and cosmetics labelling that is "false or misleading in any particular";
- By violating the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- By violating the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*

78. Such conduct is ongoing and continues to this date.

79. Plaintiff and the Class reserve the right to allege other violations of law, which constitute other unlawful business acts or practices.

### **Unfair**

80. Defendant's acts, omissions, misrepresentations, practices and nondisclosures as alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. In the alternative, Defendant's business conduct as described herein violates relevant laws designed to protect consumers and businesses from unfair competition in the marketplace. Such conduct is ongoing and continues to date.

81. Defendant's conduct with respect to the labeling, advertising, and sale of the Products was and is also unfair because it violates public policy as declared



1 by specific constitutional, statutory or regulatory provisions, including but not  
2 limited to the Consumers Legal Remedies Act, the False Advertising Law, and  
3 portions of the California Sherman Food, Drug, and Cosmetic Law.

4 82. Defendant's conduct with respect to the labeling, advertising, and sale  
5 of the Products was and is also unfair because the consumer injury was substantial,  
6 not outweighed by benefits to consumers or competition, and not one consumers  
7 themselves could reasonably have avoided.

8 83. Defendant profited from its sale of the falsely, deceptively, and  
9 unlawfully advertised and packaged Products to unwary consumers.

10 84. Plaintiff and Class Members are likely to continue to be damaged by  
11 Defendant's deceptive trade practices, because Defendant continues to disseminate  
12 misleading information on the Products' packaging. Thus, public injunctive relief  
13 enjoining Defendant's deceptive practices is proper.

14 85. There were reasonably available alternatives to further Defendant's  
15 legitimate business interests, other than the conduct described herein.

16 86. Class-wide reliance can be inferred because Defendant's  
17 misrepresentations were material, i.e., a reasonable consumer would consider them  
18 important in deciding whether to buy the Products.

19 87. Defendant's misrepresentations were a substantial factor and proximate  
20 cause in causing damages and losses to Plaintiff and Class members.

21 88. Plaintiff and the Classes were injured as a direct and proximate result  
22 of Defendant's conduct because (a) they would not have purchased the Products if  
23 they had known the truth and (b) they overpaid for the Products because the Products  
24 are sold at a price premium due to the misrepresentations.

25 **SECOND CAUSE OF ACTION**

26 **Violations of the False Advertising Law,**

27 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

28 ***(on behalf of the California Class)***

1 89. Plaintiff realleges and incorporates the allegations elsewhere in the  
2 Complaint as if set forth herein.

3 90. The FAL provides that “[i]t is unlawful for any person, firm,  
4 corporation or association, or any employee thereof with intent directly or indirectly  
5 to dispose of real or personal property or to perform services” to disseminate any  
6 statement “which is untrue or misleading, and which is known, or which by the  
7 exercise of reasonable care should be known, to be untrue or misleading” Cal. Bus.  
8 & Prof. Code § 17500.

9 91. It is also unlawful under the FAL to disseminate statements concerning  
10 property or services that are “untrue or misleading, and which is known, or which  
11 by the exercise of reasonable care should be known, to be untrue or misleading.” *Id.*

12 92. As alleged herein, Defendant falsely advertised the Products by falsely  
13 representing that each unit of the Products contained the advertised dosage, when in  
14 fact, a consumer would need to take two or more units to achieve the advertised  
15 dosage. Additionally Defendant falsely advertised the Kids Organic Fiber Gummies  
16 product by falsely representing that the product was specially formulated for kids,  
17 when in fact the product is identical to the regular Organic Fiber Gummies product.

18 93. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury  
19 in fact as a result of Defendant’s actions as set forth herein. Specifically, prior to the  
20 filing of this action, Plaintiff purchased the Products in reliance on Defendant’s false  
21 and misleading labeling claims that each unit of the Products contained the  
22 advertised dosage, and that the Kids Organic Fiber Gummies product was specially  
23 formulated for kids or otherwise uniquely suitable for kids.

24 94. Defendant’s business practices as alleged herein constitute deceptive,  
25 untrue, and misleading advertising pursuant to the FAL because Defendant has  
26 advertised the Products in a manner that is untrue and misleading, which Defendant  
27 knew or reasonably should have known, and omitted material information from its  
28 advertising.

1           95. Defendant profited from its sale of the falsely and deceptively  
2 advertised Products to unwary consumers.

3           96. As a result, Plaintiff, the Class, and the general public are entitled to  
4 public injunctive and equitable relief, restitution, and an order for the disgorgement  
5 of the funds by which Defendant was unjustly enriched.

6           97. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of  
7 herself and the Class, seeks an order enjoining Defendant from continuing to engage  
8 in deceptive business practices, false advertising, and any other act prohibited by  
9 law, including those set forth herein.

10                           **THIRD CAUSE OF ACTION**

11                           **Violations of the Consumer Legal Remedies Act,**

12                           **Cal. Civ. Code §§ 1750 *et seq.***

13                           ***(on behalf of the California Class)***

14           98. Plaintiff realleges and incorporates the allegations elsewhere in the  
15 Complaint as if set forth in full herein.

16           99. The CLRA prohibits deceptive practices in connection with the conduct  
17 of a business that provides goods, property, or services primarily for personal,  
18 family, or household purposes.

19           100. Defendant's false and misleading labeling and other policies, acts, and  
20 practices were designed to, and did, induce the purchase and use of the Products for  
21 personal, family, or household purposes by Plaintiff and Class Members, and  
22 violated and continue to violate the following sections of the CLRA:

- 23           • § 1770(a)(5): Representing that goods have characteristics, uses, or  
24           benefits which they do not have;
- 25           • § 1770(a)(7): Representing that goods are of a particular standard,  
26           quality, or grade if they are of another; and
- 27           • § 1770(a)(9): Advertising goods or services with intent not to sell them  
28           as advertised.

- § 1770(a)(16): Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

101. Defendant profited from the sale of the falsely, deceptively, and unlawfully advertised Products to unwary consumers.

102. Defendant's wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the CLRA.

103. Pursuant to California Civil Code section 1782(d), Plaintiff and the members of the Class seek an order enjoining Defendant from engaging in the methods, acts, and practices alleged herein.

104. Plaintiff sent a notice letter to Defendant's principal place of business which complies with California Civil Code § 1782(a). Plaintiff sent Defendant individually and on behalf of the proposed Class, a letter via Certified Mail, demanding that Defendant rectify the actions described above and give notice to all affected consumers of its intent to so act.

105. More than thirty days have passed since Plaintiff sent Defendant a CLRA letter and Defendant has failed to take the corrective action described in Plaintiff's letter. Wherefore, Plaintiff seeks actual, punitive, and statutory damages as appropriate, as well as attorneys' fees and costs for Defendant's violations of the CLRA.

106. Pursuant to section 1780(d) of the CLRA, below is an affidavit showing that this action was commenced in a proper forum.

#### **FOURTH CAUSE OF ACTION**

##### **Breach of Express Warranties,**

##### **Cal. Com. Code § 2313(1)**

##### ***(on behalf of all Classes)***

107. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

108. Through the Products' label and advertising, Defendant made

1 affirmations of fact or promises, or description of goods, described above, which  
2 were “part of the basis of the bargain,” in that Plaintiff and the Class purchased the  
3 Products in reasonable reliance on those statements. Cal. Com. Code § 2313(1).

4 109. The foregoing representations were material and were a substantial  
5 factor in causing the harm suffered by Plaintiff and the Class because they concerned  
6 the allegation that Defendant misrepresented the dosage of each unit of the Products,  
7 and with respect to the Kids Organic Fiber Gummies product, they concerned  
8 alleged valuation of the Kids product regarding its suitability for kids.

9 110. These representations had an influence on consumers’ decisions in  
10 purchasing the Products.

11 111. Defendant made the above representations to induce Plaintiff and the  
12 members of Class to purchase the Products. Plaintiff and the Class members relied  
13 on the representations when purchasing Defendant’s Products.

14 112. Defendant breached the express warranties by selling Products with  
15 false and misleading advertised dosage amounts. Defendant further breached express  
16 warranties by selling a Product that was marketed as specially for kids or otherwise  
17 uniquely suitable for kids, when in fact, the Kids Organic Fiber Gummies product  
18 was identical to the regular Organic Fiber Gummies product.

19 113. That breach actually and proximately caused injury in the form of the  
20 price premium that Plaintiff and Class members paid for the Products.

21 **FIFTH CAUSE OF ACTION**

22 **Breach of Implied Warranties**

23 **Cal. Com. Code § 2314**

24 ***(on behalf of all Classes)***

25 114. Plaintiff realleges and incorporates the allegations elsewhere in the  
26 Complaint as if set forth in full herein.

27 115. Defendant, through its acts and omissions set forth herein, in the sale,  
28 marketing, and promotion of the Products, misrepresented the dosage amount of the



1 Products to Plaintiff and the Class. Defendant further made representations to  
2 Plaintiff and the Class that, among other things, the Kids Organic Fiber Gummies  
3 product was specially formulated for kids or otherwise uniquely suitable for kids.

4 116. Plaintiff and the Class purchased the Products manufactured,  
5 advertised, and sold by Defendant, as described herein.

6 117. Defendant is a merchant with respect to the goods of this kind which  
7 were sold to Plaintiff and the Class, and there was, in the sale to Plaintiff and other  
8 consumers, an implied warranty that those goods were merchantable.

9 118. However, Defendant breached that implied warranty in that the  
10 Products did not contain the represented dosage in each unit of the Products, and  
11 instead, consumers must ingest multiple gummies or tablets to achieve the advertised  
12 dosage. Defendant further breached implied warranties in that the Kids Organic  
13 Fiber Gummies product is not specially formulated for kids, and instead, is identical  
14 to the regular Organic Fiber Gummies product

15 119. As an actual and proximate result of Defendant's conduct, Plaintiff and  
16 the Class did not receive goods as impliedly warranted by Defendant to be  
17 merchantable in that the Products did not conform to promises and affirmations  
18 made on the label of the Products.

19 120. Plaintiff and the Class have sustained damages as a proximate result of  
20 the foregoing breach of implied warranty in the amount of the Products' price  
21 premium.

## 22 **SIXTH CAUSE OF ACTION**

### 23 **Negligent Misrepresentation**

#### 24 ***(on behalf of all Classes)***

25 121. Plaintiff realleges and incorporates the allegations elsewhere in the  
26 Complaint as if set forth in full herein.

27 122. Defendant had a duty to disclose to Plaintiff and Class Members correct  
28 information as to the quality and characteristics of the Products because Defendant

1 was in a superior position than Plaintiff and Class Members such that reliance by  
2 Plaintiff and Class Members was justified. Defendant possessed the skills and  
3 expertise to know the type of information that would influence a consumer's  
4 purchasing decision.

5 123. During the applicable Class period, Defendant negligently or carelessly  
6 misrepresented, omitted, and concealed from consumers material facts regarding the  
7 quality and characteristics of the Products, including the amount of nutrients or  
8 probiotics contained in each gummy or tablet, and that the Kids Organic Fiber  
9 Gummies product was specially formulated for kids or otherwise uniquely suitable  
10 for kids.

11 124. Defendant made such false and misleading statements and omissions  
12 with the intent to induce Plaintiff and Class Members to purchase the Products at a  
13 premium price.

14 125. Defendant was careless in ascertaining the truth of its representations  
15 in that it knew or should have known that Plaintiff and Class Members would pay  
16 an unlawful premium for misleading products.

17 126. Plaintiff and Class Members were unaware of the falsity in Defendant's  
18 misrepresentations and omissions and, as a result, justifiably relied on them when  
19 making the decision to purchase the Products.

20 127. Plaintiff and Class Members would not have purchased the Products or  
21 paid as much for the Products if the true facts had been known.

## 22 **SEVENTH CAUSE OF ACTION**

### 23 **Intentional Misrepresentation/Fraud**

24 *(on behalf of all Classes)*

25 128. Plaintiff realleges and incorporates the allegations elsewhere in the  
26 Complaint as if set forth in full herein.

27 129. Defendant had a duty to disclose to Plaintiff and Class Members correct  
28 information as to the quality and characteristics of the Products because Defendant

1 was in a superior position than Plaintiff and Class Members such that reliance by  
2 Plaintiff and Class Members was justified. Defendant possessed the skills and  
3 expertise to know the type of information that would influence a consumer's  
4 purchasing decision.

5 130. During the applicable Class period, Defendant intentionally  
6 misrepresented, omitted, and concealed from consumers material facts regarding the  
7 quality and characteristics of the Products, including the dosage amount of each  
8 gummy or tablet, and that the Kids Organic Fiber Gummies product was specially  
9 formulated for kids or otherwise uniquely suitable for kids. These representations  
10 were material and were uniformly made.

11 131. As noted in detail above, these representations were false and  
12 misleading, as each unit of the Products contained only a fraction of the advertised  
13 dosage. Additionally, the Kids Organic Fiber Gummies product is identical to the  
14 regular Organic Fiber Gummies product. Defendant made these misrepresentations  
15 with actual knowledge of their falsity and/or made them with fraudulent intent.

16 132. Defendant made such false and misleading statements and omissions  
17 with the intent to induce Plaintiff and Class Members to purchase the Products at a  
18 premium price, deprive Plaintiff and Class Members of property or otherwise  
19 causing injury, and thus, Defendant has committed fraud.

20 133. Defendant's deceptive or fraudulent intent is evidenced by motive and  
21 opportunity. Defendant knew that consumers would pay more for a product if they  
22 believed they were receiving a higher dosage than that of competitors' lawfully  
23 labeled products. For that reason, Defendant misrepresented the dosage of its  
24 Products so that Defendant could realize greater profits. Defendant knew that  
25 consumers would place trust and confidence in its Products' claims and rely thereon  
26 in their purchases of the Products.

27 134. Defendant also offered a product that was marketed and advertised as  
28 specially formulated for kids so Defendant could realize greater profits. In addition

1 to Defendant's knowledge that the Kids Organic Fiber Gummies product was not  
2 specially formulated for kids and was not otherwise uniquely suitable for kids,  
3 Defendant expressly represented that the Kids Organic Fiber Gummies product was  
4 more suitable for kids and superior to the regular Organic Fiber Gummies product  
5 when purchasing for adults, and generated great profit by instilling confidence in its  
6 consumer base that its claims were credible.

7 135. Plaintiff and the Class Members were unaware of the falsity in  
8 Defendant's misrepresentations and omissions and, as a result, justifiably relied on  
9 them when making the decision to purchase the Products.

10 136. As a proximate result of Defendant's intentional misrepresentations,  
11 Plaintiff and the Class were induced to purchase the Products at a premium.

12 137. Plaintiff and the Class Members would not have purchased the Products  
13 or paid as much for the Products if the true facts had been known.

14 138. As a result of their reliance, Plaintiff and Class Members were injured  
15 in an amount to be proven at trial, including, but not limited to, their lost benefit of  
16 the bargain and overpayment at the time of purchase.

17 139. Defendant's conduct was knowing, intentional, with malice,  
18 demonstrated a complete lack of care, and was in reckless disregard for the rights of  
19 Plaintiff and Class Members Plaintiff and Class Members are therefore entitled to  
20 an award of punitive damages.

## 21 **EIGHTH CAUSE OF ACTION**

### 22 **Quasi-Contract/ Unjust Enrichment**

#### 23 ***(on behalf of all Classes)***

24 140. Plaintiff realleges and incorporates the allegations elsewhere in the  
25 Complaint as if set forth in full herein.

26 141. As alleged in detail above, Defendant's false and misleading labelling  
27 caused Plaintiff and the Class to purchase the Products at a premium.

28 142. In this way, Defendant received a direct and unjust benefit, at Plaintiff

1 and the Class's expense.

2 143. It would be unjust and inequitable for Defendant to retain the above-  
3 mentioned benefits. For example, Defendant was only able to charge a premium for  
4 the Products by intentionally withholding information from Plaintiff, or otherwise  
5 misrepresenting the Products' qualities.

6 144. Plaintiff and the Class seek restitution.

7 **VII. PRAYER FOR RELIEF**

8 145. Wherefore, Plaintiff, on behalf of herself, all others similarly situated,  
9 and the general public, prays for judgment against Defendant as follows:

- 10 • For an order certifying this action as a class action, appointing Plaintiff  
11 as the Class Representative, and appointing Plaintiff's Counsel as Class  
12 Counsel;
- 13 • For an order declaring that Defendant's conduct violates the statutes  
14 and laws referenced herein, consistent with applicable law and pursuant  
15 to only those causes of action so permitted;
- 16 • For an order awarding monetary compensation in the form of damages,  
17 restitution, and/or disgorgement to Plaintiff and the Class, consistent  
18 with permissible law and pursuant to only those causes of action so  
19 permitted;
- 20 • For an order awarding punitive damages, statutory penalties, and/or  
21 monetary fines, consistent with permissible law and pursuant to only  
22 those causes of action so permitted;
- 23 • For an order awarding attorneys' fees and costs, consistent with  
24 permissible law and pursuant to only those causes of action so  
25 permitted;
- 26 • For an order awarding pre-judgment and post-judgment interest,  
27 consistent with permissible law and pursuant to only those causes of  
28 action so permitted; and

- For such other and further relief as the Court deems just and proper.

**JURY DEMAND**

146. Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 11, 2025

**CROSNER LEGAL, P.C.**

By: /s/ Lilach H. Klein

Lilach H. Klein

9440 Santa Monica Blvd. Suite 301

Beverly Hills, CA 90210

Tel: (866) 276-7637

Fax: (310) 510-6429

*[lilach@crosnerlegal.com](mailto:lilach@crosnerlegal.com)*

***Attorneys for Plaintiff and the Proposed Class***



**Civil Code Section 1780(d) Venue Affidavit**

I, Lilach H. Klein, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am one of the counsel of record for Plaintiff.

2. This declaration is made pursuant to § 1780(d) of the California Consumers Legal Remedies Act.

3. Defendant has done, and is doing business in California, including in this District. Such business includes the marketing, promotion, distribution, and sale of the Products.

4. Plaintiff purchased one or more of the Products at issue in this District.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on February 11, 2025 in Sacramento, California.

Crosner Legal, P.C.

By: /s/ Lilach H. Klein

LILACH H. KLEIN

9440 Santa Monica Blvd. Suite 301

Beverly Hills, CA 90210

Tel: (866) 276-7637

Fax: (310) 510-6429

[lilach@crosnerlegal.com](mailto:lilach@crosnerlegal.com)

*Attorneys for Plaintiff and the Proposed Class*